

EXHIBIT A

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MONTANA

3 MISSOULA DIVISION

4 CAUSE NO. CV-13-121-M-DWM

5 TAMARA DOWNEN, Individually and as
6 Personal Representative for the
7 ESTATE OF STANLEY L. DOWNEN,

8 Plaintiffs,

9 vs.

10 MONTANA VETERANS' HOME; STATE OF
11 MONTANA DEPARTMENT OF PUBLIC HEALTH AND
12 HUMAN SERVICES; CITY OF COLUMBIA FALLS;
13 MIKE JOHNSON and DAVID G. PERRY,

14 Defendants.

15 VIDEOTAPED DEPOSITION

16 OF

17 TAMARA DOWNEN

18 (Taken on Behalf of the Defendants,
19 Montana Veteran's Home; State of Montana
20 Department of Public Health and Human Services)

21 Taken at Moore, Cockrell, Goicoechea & Axelberg
22 145 Commons Loop, Suite 200
23 Kalispell, Montana
24 Thursday, November 7, 2013 - 10:00 a.m.

25 Reported by Jolene Asa, RPR, and Notary Public
for the State of Montana, Flathead County

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 29

1 He spent a lot of his time volunteering around
2 Columbia Falls and local areas, just the community, and
3 built playgrounds with several other retired ironworkers
4 or people from the aluminum plant. He was really
5 devoted to the community. He supported the Wildcats.
6 He was just -- he was an avid fisherman, and he was a
7 great guy.

8 Q. Do you know where he was born and raised?

9 A. Westby, Montana.

10 Q. Did you say Busby?

11 A. Westby.

12 Q. Westby?

13 A. Yes.

14 Q. How long had he lived in Columbia Falls?

15 A. The majority of his life.

16 Q. Do you know what his education was?

17 A. I would say probably K through 8. I don't
18 think it was very common for them to graduate back then.

19 Q. And you say he was in the Navy?

20 A. Yes.

21 Q. Do you know how long?

22 A. I believe three or four years.

23 Q. Do you know what years those were?

24 A. 1953 to '57, approximately. It may not be
25 accurate, but during that time frame.

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 38

1 Q. At some point in time, did -- first of all,
2 tell me when you first learned that Stanley had
3 Alzheimer's or dementia.

4 A. Roughly 2010 to 2011, I believe it was. I'm
5 not exact. We would have to look back at papers when I
6 first took him to the doctor.

7 Q. What was it that caused you to take him to the
8 doctor for that?

9 A. I just saw the signs. Being familiar with it,
10 I thought it was time that we go get him checked out.

11 Q. Describe the progression of Stanley's
12 Alzheimer's or dementia from that point until the time
13 he was -- let's just take it up to the time that he was
14 admitted over at Pathways.

15 A. Okay. He hid it pretty well, and it never
16 really got severe up until the point where he ended up
17 in Pathways, but it wasn't as severe as what happened
18 after he was Tased.

19 Q. So let's -- we'll talk about all of those
20 segments, but I want to start with when in 2009, '10 or
21 '11 -- whenever it was that he started experiencing
22 Alzheimer's or dementia, and take me from that point up
23 to the point where he was admitted to Pathways, and tell
24 me the best you can how it progressed.

25 A. It progressed quite slowly.

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 39

1 Q. What symptoms did you see?

2 A. He was putting his keys in the sugar bowl,
3 putting hamburgers in the cupboards. That's around the
4 time I kind of said, "This isn't right." His memory was
5 starting to fade, but he was still able to recognize me
6 and his family members.

7 He quit driving, and he just kind of lost
8 interest in everything that he liked to do such as
9 fishing, going to ball games, but we still tried to
10 facilitate all of that.

11 The progression, I would have to say, was
12 quite slow, but it was definitely -- it was there, but
13 it didn't just happen overnight, so to speak.

14 Q. When did you start actively taking care of
15 Stanley on a daily basis?

16 A. 2011, July 2011.

17 Q. And why is it that you remember that date?

18 A. Because that's when I moved in with him, and
19 it was pretty challenging.

20 Q. Did you just move in with him, or did you move
21 your husband and kids in with him as well?

22 A. The whole family. That's what he wanted to
23 happen. It was that, or we were going to have to figure
24 something else out just because I saw it going downhill,
25 and you have to be prepared for that, so --

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 49

1 recall.

2 Q. Before Stanley's dementia and Alzheimer's
3 progressed, did you ever have any discussions with him
4 about what he preferred you do when he needed more care
5 than you could provide?

6 A. Right. He always said, "I would prefer to go
7 to the veterans' home."

8 Q. Did he say why?

9 A. He volunteered out there. He was really good
10 friends with the superintendent and the -- I don't know
11 if it's a commander or -- whoever lives in the house out
12 there. Somebody stays in a house, I believe, or -- I
13 don't really remember how it works, but he was really
14 good friends with him, and so he was always out there.

15 Even I would go out there with him as a kid,
16 and we'd plant all of the flowers and visit all of the
17 old people. It was kind of like a home to him, I guess.
18 He was just really close with all of the people, and he
19 did a lot of volunteer work out there.

20 Q. Fair to say that's the place Stanley wanted to
21 go if he had to be in an assisted or nursing facility?

22 A. Yes.

23 Q. And he expressed that to you?

24 A. Uh-huh. Me and his brother, Dick.

25 Q. Do you know who -- his friend out there who

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 57

1 He thought it was time for him to go to a home, and so
2 he called the police.

3 I don't know why he did it, but he did, and
4 they showed up, and they convinced me that it would be
5 much safer for me and my family if I was to admit him
6 into a home. So they said they would take him up to
7 Pathways until we could find placement for him. I
8 didn't have to do it, but they were able to convince me,
9 due to safety issues, that it would be the best choice.

10 Q. What safety issues specifically were they
11 talking about?

12 A. Such as burning the house down. They said
13 they'd seen really bad situations with Alzheimer's
14 people in the past, so --

15 Q. When did this incident occur?

16 A. When the police were called?

17 Q. Yes. And then -- so the incident where
18 Stanley -- your brother called the police and Stanley
19 was ultimately admitted to Pathways.

20 A. February 23rd, 2012.

21 Q. Who was present for this incident?

22 A. I was, my husband was, my children and my
23 niece.

24 Q. Who is your niece?

25 A. Paris Downen. I was raising her at the same

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 71

1 back and said, "He's appropriate."

2 Q. Was there any other reason you chose
3 Expressions over a different facility?

4 A. At the time, no. I just wanted him to get out
5 of Pathways, because I think there's a time limit up
6 there.

7 Q. Was it your plan to leave him in Expressions?

8 A. Yeah. If finances would have worked out, yes.
9 They are a non-Medicaid facility.

10 Q. So what do you mean "If finances would have
11 worked out"?

12 A. Yeah. It was so expensive that it wouldn't
13 have been possible, probably, to pay for his cost of
14 living.

15 Q. At Expressions, do you mean?

16 A. Yes.

17 Q. How much was Expressions per month?

18 A. I believe, like, 45 or 4,800 bucks a month.

19 Q. How were you paying for Stanley's nursing home
20 care?

21 A. He had some money, and then I helped what I
22 could. My brother pitched in a little bit.

23 Q. Did Stanley have money saved for that?

24 A. It's whatever was in his account. He got
25 retirement every month and Social Security.

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 74

1 A. No, because it's a lockdown facility.

2 Q. And what do you mean by, "It's a lockdown
3 facility"?

4 A. You have to enter a code to get into the
5 facility and enter a code to exit.

6 Q. Do you know if all doors require a code to
7 exit?

8 A. I -- I know the front door did. There was,
9 like, one other fire exit, but that was always locked.

10 Q. And did you talk to Ms. Zinke about the fact
11 that it had those coded doors?

12 A. I don't know if we specifically talked about
13 it. She just told me that it's a lockdown facility and
14 he wouldn't wander.

15 Q. How big is Expressions? How many beds do they
16 have? Do you know?

17 A. I don't really know off the top of my head.

18 Q. So Stanley was obviously admitted there. How
19 did he do during his stay based on what you know?

20 A. Based on what I know, he did pretty well up
21 there.

22 Q. Did he have any issues with aggressive
23 behavior?

24 A. Yes.

25 Q. What were they?

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 80

1 Q. Clarice is Dick's wife?

2 A. Clarice is Stan's sister.

3 Q. I see. Who else visited Stanley at
4 Expressions?

5 A. I believe he had a few friends visit him.

6 Q. Did you ever have concerns with the care that
7 Stanley received at Expressions?

8 A. No.

9 Q. Do you feel the care he received there was
10 appropriate?

11 A. Uh-huh.

12 Q. Is that a "Yes"?

13 A. Yes.

14 Q. How is it that you ultimately decided to move
15 Stanley out of Expressions?

16 A. Well, I had always remembered he requested, if
17 anything ever happened and he needed to go to a home, he
18 wanted to go to the veterans' home, and so I was just
19 kind of trying to honor that, and then he kept telling
20 his brother, Dick, that he just wanted to be at the
21 vets' home. I can't quite say what they had talked
22 about, but it was -- when he stayed at Expressions, he
23 was still talking about the vets' home, and I just was
24 considering financial obligations down the road for the
25 future.

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 83

1 comfortable moving him.

2 BY MR. GOICOECHEA:

3 Q. When did you speak with Helen?

4 A. I do not recall. It must have been sometime
5 in May of 2012.

6 Q. Did you speak with Helen more than once?

7 A. I'm pretty sure, but -- I can't guarantee
8 that, but I'm pretty sure we did.

9 Q. Did you fill out an application before you
10 spoke with Helen?

11 A. I don't know if it was before or after. She
12 just helped me -- you know, being the social worker, she
13 guided me down the path.

14 Q. At the time you filled out an application to
15 have Stanley admitted to the veterans' home, did you
16 feel the veterans' home, based on what you knew, was an
17 appropriate place for him?

18 A. At the time, yes.

19 Q. Did you believe at that time, again, based on
20 what you knew, that the veterans' home had the ability
21 to provide an appropriate level of care for Stanley?

22 A. After them reassuring me over and over, yes.

23 Q. What about before you had discussions where
24 you were reassured? When you first applied, did you
25 believe that the veterans' home had the capability of

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 124

1 somebody from the veterans' home called you after this
2 incident occurred?

3 A. Yes.

4 Q. Do you know who that was?

5 A. I don't.

6 Q. Did you ask for their name?

7 A. I believe they told me, but I don't recall who
8 it was.

9 Q. Was it male or female?

10 A. Female.

11 Q. Do you remember approximately what time they
12 called?

13 A. A little after five.

14 Q. And tell me to the best of your recollection
15 everything that was discussed on that call.

16 A. Well, they basically told me that he had got
17 out again. He got out one of the doors, and they
18 couldn't get him back in, so they called police, and
19 then he ran and he tripped and he fell, and then I don't
20 even remember what all was said about that, but then
21 they were having to bring him up to Pathways and that
22 that's where he would be placed.

23 Q. Do you remember anything else about that
24 discussion?

25 A. I remember my child -- my 11-year-old heard me

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 127

1 from the hospital, from Kalispell Regional Medical
2 Center.

3 Q. What did they tell you?

4 A. They wouldn't tell me much, but -- they just
5 wanted a little more information.

6 Q. What did they ask you?

7 A. Just a little bit of his history, of his past.

8 Q. Who did you talk to?

9 A. I don't remember. There were so many people
10 it's hard to say.

11 Q. So on that phone call did you talk to multiple
12 people?

13 A. I think it was a doctor. Possibly
14 Dr. Bechard, but I could be wrong on that.

15 Q. Were you of the understanding that Stanley was
16 at the emergency room when you received this call?

17 A. I'm pretty sure they told me he was at the
18 emergency room. I just knew he was at the hospital.

19 Q. Did they tell you he was injured?

20 A. No. I don't believe they could release that
21 to me.

22 Q. Did you ask?

23 A. Not at that moment, no.

24 Q. Did you tell them that you were his power of
25 attorney?

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 129

1 timeline.

2 Q. And at what point did his medical providers
3 tell you what happened?

4 A. They never did.

5 Q. How did you learn about what happened on
6 June 1st?

7 A. My brother showed up on June 3rd with a
8 newspaper clipping, and it said -- it was just in the
9 police blotter about how an agitated man was shot in the
10 head with a Taser, and he pointed to that spot and said,
11 "I think that was our grandpa." He had heard through
12 somebody that it very possibly was our grandpa that was
13 Tased.

14 And then that's when I went up and talked to
15 Chief Perry about it, and that's when I officially
16 learned that, yes, it was Grandpa, and then once I
17 learned of it, then the doctors -- they didn't really
18 talk to me much about it, but they -- they knew he was
19 Tased because that's where the probes were taken out,
20 I believe.

21 Q. Give me your best recollection of when your
22 brother showed up with this article from the newspaper.

23 A. June 3rd.

24 Q. Had you been to the emergency room at that
25 point?

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 137

1 wanted to know if he had serious injuries from what
2 happened.

3 Q. What did they say when you asked that
4 question?

5 A. They said they couldn't really determine what
6 was going on with him at the time, and they did do two
7 MRIs or CAT scans.

8 Q. Did you develop an understanding of what the
9 CAT scans revealed or the head CTs revealed?

10 A. That his brain was pretty much deteriorated.

11 Q. From what?

12 A. The dementia.

13 Q. Did anybody ever tell you that Stanley
14 suffered an acute brain injury because of the Tasing?

15 A. No.

16 Q. What was your understanding of how his overall
17 health condition progressed over the 20-plus days that
18 he was in the hospital?

19 A. How did it deteriorate?

20 Q. Yes.

21 A. He pretty much lost all his functions. I had
22 to feed him. He was incontinent. He was restrained to
23 the bed. He wouldn't wear clothes, which was really odd
24 for him because he was really, really modest. He just
25 completely went downhill. He was a whole other person.

VIDEOTAPED DEPOSITION OF TAMARA DOWNEN

Page 203

1 A. Maybe, roughly, 20 minutes approximately.

2 Q. Tell me about what was discussed.

3 A. I just wanted to know what happened and why
4 they had used a Taser on an elderly man with
5 Alzheimer's, and he just said they had justice because
6 he was threatening to throw rocks and that he had saved
7 the rocks as evidence, and I requested a police report,
8 and he said he didn't have to give one to me because
9 there were no charges filed.

10 Q. Okay. What else was said?

11 A. I said, "Well, I'll look into getting an
12 attorney on this," because I just felt that it wasn't
13 right, what happened to him.

14 Q. Anything else that you can remember saying to
15 Chief Perry?

16 A. Not that I can recall.

17 Q. Anything else that Chief Perry said to you
18 that you can recall?

19 A. Not necessarily. I just barely remember it.
20 It's really vague. I don't really remember our
21 conversation except for that he said they had justice to
22 Tase him.

23 Q. Okay. You've read the information now that's
24 been produced in this case; right?

25 A. Yes.